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## THE NATURE OF A LIMITED COMPANY ESTABLISHMENT: ARTICLE 7 SECTION (1) OF THE LAW #40 OF 2007 CONCERNING LIMITED COMPANIES

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### ABSTRACT

One of the elements that determine whether growth is successful or unsuccessful is how the business world is developing. The government has a responsibility to provide direction and guidance in the context of developing the business world and establishing an environment that is favorable to business and promotes economic growth. Protection extends to third parties connected to a limited liability company, such as debtors, creditors, and investors, as well as to legal topics related to the formation or dissolution of a limited liability company. The presence of this legal protection will affect legal certainty, which will eventually speed up the rotation of the national economy's wheels. As required by Article 33 of the Republic of Indonesia's 1945 Constitution, the nation's economy was to be realized by Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Businesses. The Legislation of the Republic of Indonesia Number 40 was in effect for 9 (nine) years. A number of flaws or gaps in the law governing limited liability companies were discovered in 2007 and must be promptly addressed through replacement to support changes in the global economy. The Law of the Republic of Indonesia Number 40 of 2007 governing limited liability companies needs to be replaced for a number of reasons, including to recognize private limited liability companies as legitimate legal entities and to address the findings of the Ease of Doing Business (EODB) survey. The foundation for a limited liability company's formation, the capital structure, and the presence of a board of commissioners are issues related to a limited liability company as a legal entity, and up until now, legal smuggling has frequently happened. The main and secondary data used in this legal study, which uses a normative juridical approach, are analyzed using quantitative analysis. The activity of creating a legal subject in the form of a legal entity in the form of a capital partnership established based on an agreement as stated in the deed of establishment of a limited liability company made through a notarial deed, as a vehicle for people to carry out business acts, is the conclusion of research on the nature of the establishment of a limited liability company in Article 7 paragraph (1) of Law Number 40 of 2007 concerning limited liability companies.

### KEY WORDS

Limited liability company, regulation, law, public service.

The state must support the community's need for business by fostering an environment that is favorable to enterprise and taking into consideration both national and international developments in Indonesia. Domestic changes have a direct effect on Indonesia's economy and regulatory structure. Numerous bilateral, regional, and multilateral free trade agreements have a significant impact on the condition of the world. The agreement to establish the ASEAN Economic Community, also known as the ASEAN Economic Community, has the most immediate execution (AEC). The first step in increasing the manufacturing sector's competitiveness, according to the Ministry of Industry, is to improve the business climate. When formulating policies and assessing the industrial business environment, the government considers a number of important variables, including infrastructure, business certainty, bureaucratic services, the quality of human and workforce resources, and fiscal facilities. One way to encourage a prosperous business environment is to make it straightforward to start a business. Because entrepreneurs are crucial to a country's financial



stability, Indonesia requires more of them. Analysts also concur that for a country to be successful, at least 2% (two percent) of its citizens must be entrepreneurs. This has been demonstrated by numerous developed nations, including Singapore and Japan. For instance, 20% of people in Japan are the owners of small and medium-sized businesses, compared to 2% (two percent) of people who are the owners of big corporations. Currently, 7% (seven percent) of Singapore's 40,000,000 (forty million) residents are company owners. There are more than 230 million people living in Indonesia, but only about 450,000 (four hundred fifty thousand), or 0.18 percent (zero point eighteen percent), of them are companies. The three fundamental societal needs are shelter, clothing, and point 18% of the total number of people who are presently residing. One method to meet these needs is by running your own business. The Republic of Indonesia's 1945 Constitution's fourth paragraph states that meeting basic social needs will inherently support overall well-being and allow long-term, sustainable national economic development. Economic democracy in national development is carried out in accordance with the principles of unity, efficiency with justice, sustainability and environmental awareness, and independence, as well as by maintaining a balance of advancement and national economic unity, states Article 33, paragraph 4, of the 1945 Constitution of the Republic of Indonesia. The Republic of Indonesia's 1945 Constitution, Article 33, Paragraph 1. "The economy is structured as a joint venture based on the principle of kinship," it was declared in 1945. The clarification of the article is as follows: "Article 33 of the Republic of Indonesia's 1945 Constitution provides the foundation for economic liberty. Under the direction or supervision of other group members, production is carried out by everyone for everyone. The welfare of society is prioritized over an individual's wealth." The economy was created as a cooperative enterprise founded on the kinship principle as a result. The company is based on the idea that everyone will thrive. Therefore, the government must exert control over the economic spheres that are significant to it and have an impact on the general populace's lives. If not, those in command and many other oppressed people will have control over the output. Only businesses that do not immediately impact the lives of many people can be controlled by a single individual. According to the People's Consultative Assembly of the Republic of Indonesia's Decree XVI/MPR/1998 concerning Economic Politics in the Framework of Economic Democracy, investment policies should always support a people's economy, which entails the expansion of micro, small, medium, and cooperative business activities.

Article 33 of the Republic of Indonesia's 1945 Constitution states that business activities must be supported by economic activities that help create a prosperous community. One of the most crucial steps in starting a company is selecting the right business structure. The type of company is determined by a number of elements, such as business continuity, contribution to business profits, and level of business risk. The ultimate objective of every company is to maximize profits, which is inextricably linked to the viability of the business itself. Creating a limited liability corporation, for instance, is more legal than creating other business structures. In addition, the level of risk is a crucial factor to take into account when deciding on the type of business, such as when determining whether an investor's or management's responsibilities in a company are restricted to the invested money or include personal assets. In Indonesia, the two (two) most prevalent kinds of business structures are individual companies and joint ventures. An individual firm is a particular kind of business that has a single capital owner and is run by that same individual. Examples include trading businesses (hereafter referred to as UD) and trading companies (hereafter referred to as PD), as well as individual companies that are considered legal entities in accordance with Government Regulation No. 2021 regarding small microbusinesses with a single founder that are subject to the Job Creation Law's implementing regulations. A joint company is a business that was started by two or more people and is acknowledged by the law as a corporation. Examples of this type of business include a Firma/Fa or a Commanditaire Vennootschap (hereinafter referred to as capital partnership Limited Liability Company). The table above lists the various business structure categories based on the amount of investors and business owners. A business entity that is not a legal entity and a business entity that is a legal entity are distinguished in terms of company categorization. The investor's liability for



the business entity is constrained to the amount of capital invested (paid up) in that firm because the investor's personal assets and capital are separated under the status of a legal entity attached to a business entity.

The three basic needs of society are for clothing, food, and a location to live. Creating your own businesses is one method to satisfy these needs. Meeting the basic needs of society will tangentially add to the general welfare, infers the fourth paragraph of the Republic of Indonesia's 1945 Constitution, enabling economic democracy-based sustainable national economic growth. Article 33, paragraph 4 of the 1945 Constitution of the Republic of Indonesia states that economic democracy in national development is carried out in accordance with the principles of unity, efficiency with justice, sustainability and environmental awareness, and independence, while maintaining a balance between development and national economic unity. The Republic of Indonesia's 1945 Constitution, Article 33, Paragraph 1. The economy is set up as a joint venture founded on the kinship principle, according to a 1945 statement. According to its explanation, the Republic of Indonesia's 1945 Constitution's Article 33 lays the groundwork for economic independence. Production is carried out by all for all, under the supervision or guidance of other group members. The welfare of community is given precedence over individual prosperity. As a result, the economy is set up as a collaborative effort founded on the kinship principle. The prosperity of each person is also the cornerstone of the economy. As a result, the state must exercise control over the economic sectors that are vital to it and have an impact on the lives of the broader public. If not, the output will come under the control of those in power and a sizable number of those who are oppressed by them. The only businesses that can be owned by one individual are those that do not directly affect the lives of many people. Investment policies should always support a people's economy, which includes the expansion of micro, small, medium, and cooperative business activities, in accordance with Decree XVI/MPR/1998 concerning Economic Politics in the Context of Economic Democracy issued by the People's Consultative Assembly of the Republic of Indonesia.

Article 33 of the Republic of Indonesia's 1945 Constitution states that business activities must be supported by economic activities that help create a prosperous community. One of the most crucial steps in starting a company is selecting the right business structure. The type of company is determined by a number of elements, such as business continuity, contribution to business profits, and level of business risk. The ultimate objective of every company is to maximize profits, which is inextricably linked to the viability of the business itself. Creating a limited liability corporation, for instance, is more legal than creating other business structures. In addition, the level of risk is a crucial factor to take into account when deciding on the type of business, such as when determining whether an investor's or management's responsibilities in a company are restricted to the invested money or include personal assets. In Indonesia, the two (two) most prevalent kinds of business structures are individual companies and joint ventures. An individual firm is a particular kind of business that has a single capital owner and is run by that same individual. Examples include trading businesses (hereafter referred to as UD) and trading companies (hereafter referred to as PD), as well as individual companies that are considered legal entities in accordance with Government Regulation No. 2021 regarding small microbusinesses with a single founder that are subject to the Job Creation Law's implementing regulations. A joint company is a business that was started by two or more people and is acknowledged by the law as a corporation. Examples of this type of business include a Firma/Fa or a Commanditaire Vennootschap (hereinafter referred to as capital partnership Limited Liability Company). The table above lists the various business structure categories based on the amount of investors and business owners. A business entity that is not a legal entity and a business entity that is a legal entity are distinguished in terms of company categorization. The amount of paid-in capital determines the extent of the investor's liability for the company entity.

The type of company that will be assessed is PT. Business entities that are legal bodies fall under the aforementioned classification and are included in PT. PT is a capital partnership that was established based on an agreement, conducts business with fully divided authorized capital, and complies with the requirements of the Law, as stated in Article



1 Point 1 of Law Number 40 of 2007 Concerning Limited Liability Companies (hereinafter referred to as the UUPT). The following are some important aspects of PT that the author can describe on the premise of the previously described understanding of PT: PT is a group of modals:

- Established as a result of a contract;
- Carrying out company operations with approved capital;
- All shares of the approved capital are issued;
- Comply with the UUPT and implementing rules.

Article 7 Paragraph 1 of the Company Law outlines the requirements for establishing a PT and states that "a company is formed by two or more people with a notarial deed drawn up in the Indonesian language." According to his definition, a "person" can be either an Indonesian or an alien, as well as a formal entity from either country. The sentences in this sentence stress the idea that a company has more than one shareholder because it is essentially founded by two (two) legal subjects or on the basis of an agreement. This idea is relevant to the Company Code. According to the Company Law, PTs can only have a maximum of two owners. Some people will only establish a business with people they are related to by blood or marriage, such as family members or a married couple. It doesn't matter if the founder is only linked through familial ties as long as they are an adult, that is, at least 18 (eighteen) years old. However, there will be an issue if the owners are just a husband and wife because Law No. 1 of 1974 Concerning Marriage governs marital assets.

There are legal repercussions when a man and a woman who are both legal citizens get married. Property shared by a couple is one of these legal repercussions. An important element is established by the provisions of Articles 35 and 36 of Law No. 1 of 1974 Concerning Marriage, which state that marital property is divided into two categories: personal property and joint property (hereinafter referred to as UUP). Personal or inherited assets are any assets acquired by either spouse previous to the marriage, including any gifts or inheritances. While every commodity a husband or wife acquires while they are married is considered a joint asset. On inherited or personal property, the husband or wife may act alone, but only on real estate that is jointly held.

Assets obtained after the marriage remain the sole property of and under the control of each party, and the husband or wife may deviate from the terms of the joint property by abolishing the joint property, ensuring that there is no joint property while they are married or forever. Property unions during marriage can be abolished by subjecting marriage contracts to Article 29 UUP rules. This clarification demonstrates the legal ambiguity of line 1 of Article 7 UUPT. Only the minimum number of 2 (two) people are mentioned in Article 7 Paragraph 1 UUPT as being necessary to start a PT.

However, the standing and position of "person" are not specifically defined in Article 7 paragraph 1 UUPT. For instance, the assets held by a husband and wife after their marriage will be regarded as joint assets if the two people forming a PT are husband and wife without a prenuptial agreement.

Rules and regulations that ban or permit only give an interpretation even though marriages with distinct assets or a combination of assets have different outcomes. Following the union of assets in marriage, it is necessary to acquire both spouses' permission before transferring fixed assets, and vice versa. This includes the husband and wife forming a Limited Liability Company. As was already mentioned, the issue of a husband and wife founding a limited liability company presents issues that prevent achieving legal certainty, one of the goals of passing legislation. The researcher decided to investigate the nature of the establishment of a limited liability company founded by a husband and wife based on Article 7 paragraph (1) of the Limited Liability Company Law due to the legal ambiguity in Article 7 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies.

## **METHODS OF RESEARCH**

In order to ascertain how the relationship between the law and society and various variables impact how the law is implemented in society, this study uses the empirical juridical



approach as its research methodology. Through library study, the second set of data was acquired in an indirect manner. The study's specification details the analysis to identify the relevant positive law related to the main research question as well as the pertinent negative law linked to the legal concept. Identification, classification, and validation of qualitative data are done using primary and secondary data, and the findings are given in the study report.

## RESULTS AND DISCUSSION

The Preamble of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) states that the Government of the Republic of Indonesia (Government) is responsible for a variety of duties, including safeguarding the entire Indonesian nation and preventing all bloodshed, promoting the welfare of the populace, and educating them. In order to advance the general welfare, it is essential to pursue national sustainable development founded on economic democracy while continuing to defend the entire country and Indonesia's entire homeland. It is expected that the Indonesian people will develop an intelligent way of life along with the realization of welfare and wealth for the community.

To safeguard all Indonesian citizens and advance the welfare and prosperity of the populace, limited liability companies (hereafter referred to as "PT"), one of the pillars of the national economy, must be regulated. Whether growth is effective or unsuccessful depends on how the business world is changing. The government is in charge of giving direction and advice with regard to expanding the business community and creating a climate that is conducive to economic development. Protection includes both formal issues related to the creation or dissolution of PTs as well as third parties connected to PTs, such as debtors, creditors, and investors. Legal certainty will be impacted by the existence of this protection, which will ultimately speed up the country's economic growth.<sup>1</sup>

The Republic of Indonesia's 1945 Constitution transforms national goals into ideal traits. The nation's economy must be organized in accordance with the democratic economic ideals of cooperation, efficiency with justice, sustainability, environmental awareness, independence, and preservation of national economic unity, according to Article 33 of the Republic of Indonesia's 1945 Constitution. Affinity and cooperation for social welfare between the people, for the people, by the people, and with the people, under the authority of the government, are the foundation of the national economic democracy system in light of this. It is imperative to increase investment in order to transform economic potential into real economic power using both domestic and foreign capital in order to accelerate national economic development and achieve Indonesia's political and economic sovereignty. A people's economy's overarching framework, which calls for the growth of micro, small, medium, and cooperative businesses, is required to be consistent with investment policies at all times, according to the political-economic framework within the economic democracy framework. It is necessary to create an investment climate that is supportive, encouraging, offers legal certainty, justice, and more efficient benefits while also taking the interests of the Indonesian national economy into consideration in order to deal with changes in the global economy and Indonesia's participation in various forms of international cooperation.

The creation of the nation's economy resulted in the adoption of Law of the Republic of Indonesia Number 40 governing Limited Liability Companies in 2007, in accordance with Article 33 of the Republic of Indonesia's 1945 Constitution. (also known as the "Company Statute" hereafter). The Company Law has been in force for nine (9) years, during which time several flaws have been found that must be fixed as soon as feasible to take into account changes in the world economy. The private PT's position as a legal entity and the need to address the results of the Ease of Doing Business (EODB) survey are two reasons why the PT UU needs to be revised. Problems for PT as a legal entity include the foundation for its formation, the capital structure, and the existence of a board of commissioners, whose presence has frequently led to legal contraband. Indonesia is ranked 91st out of 190 nations

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<sup>1</sup> *Majelis Permusyawaratan Rakyat (MPR), Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia Nomor XVI/MPR/1998 tentang Politik Ekonomi dalam Rangka Demokrasi Ekonomi.*



in the globe by the results of the 2016 EODB survey conducted by the World Bank. The EODB indicators for starting a company, safeguarding minority investors, and resolving insolvency are all directly correlated with the UUPT. Indonesia is considered to be a country with a high level of bureaucracy and high expenses when it comes to the indicator for starting a company. contributing 5 (five) of the 11 (eleven) steps involved in forming a business in connection to the process of creating a PT legal entity. Among the major ASEAN countries, Indonesia has the most processes and the longest average completion time. Indonesians are therefore less competitive in the ASEAN Economic Community in terms of corporate legitimacy (AEC). Indonesia has a grade of 70 for protecting minority investors (seventy). The director liability index, the ease of shareholder litigation index, the scope of shareholder rights, and the scope of company transparency make up the 2017 EODB index for protecting minority investors. The UUPT is in control of dissolution and liquidation issues when it comes to dealing with insolvency, not bankruptcy prevention. A Limited Liability Company is a business entity that conforms to this Law and its implementing regulations. Due to this situation, Indonesia is one of the countries with the highest bankruptcy settlement costs and the lowest return rate. It is a capital partnership that was established in accordance with an agreement, operates using approved capital that has been entirely divided into shares, and carries out operations in accordance with the agreement. The meaning or interpretation of PT as a legal entity is illustrated by this definition.

The basic characteristics of a limited liability company are as stated in Article 7 Paragraph 1 of the Limited Liability Company Code:

- In order to achieve equitable welfare and prosperity for all Indonesians, both individuals and organizations, it is important to establish legal certainty in the business world with legal entities in significant production branches that affect the livelihoods of the public. This is done as part of national economic development based on economic democracy;
- On a more practical level, this entails promoting legal certainty in the commercial sphere as part of realizing the goals of national economic development based on economic democracy, so that prosperity and prosperity can be realized in advancing significant production branches of the economy in a way that is equitable for all Indonesians, both individuals and legal entities.

In order to maximize the great prosperity of the Indonesian people, it is important to take into account the fact that business activities in PT can fundamentally support the occurrence of national economic activities that lead to the formation of a prosperous society as required by Article 33 of the Constitution, particularly paragraph (2) of the Republic of Indonesia of 1945. One of the most crucial steps in starting a company is selecting the right business structure. The type of company is determined by a number of elements, such as business continuity, contribution to business profits, and level of business risk. Every business endeavor aims to maximize profit, which obviously depends on the viability of the company. Creating a limited liability corporation, for instance, is more legal than creating other business structures. In addition, the level of risk is a crucial factor to take into account when deciding on the type of business, such as when determining whether an investor's or management's responsibilities in a company are restricted to the invested money or include personal assets. In Indonesia, the two (two) most prevalent kinds of business structures are individual companies and joint ventures. A business that is held and run by one person alone is referred to as an individual company. Examples include a trading firm or a trading company. While a Joint Company is a business structure established by two or more people, other examples include *Vennootschap Onder Firma*, *Comanditaire Vennootschap (CV)*, also known as a Limited Partnership, and Limited Liability Company (PT). The table above lists the various business structure categories based on the amount of investors and business owners. A business entity that is not a legal entity and a business entity that is a legal entity are distinguished in terms of company categorization. The investor's liability in the business entity is therefore restricted to the amount of capital invested (paid up) in the firm because of the legal entity status of a business entity that makes a distinction between an investor's



capital and personal assets. While PT is an example of a business entity with legal standing, Firma and CV are examples of business entities that do not.

The Commercial Code (also known as the Criminal Code), unlike the Limited Liability Company Law, does not specifically declare that NV (also known as PT) is a legal entity. In reality, a PT's formal identity is thought to be based on the provisions of Article 40 paragraph 2. (two). The academics then suggested solely treating PT as a legal body. which was later approved starting on March 7, 1995. (One billion 995 ninety-five) A legal entity is an object of the law with rights and responsibilities, while a limited liability company is a legal fiction.

The first fictional figures appeared during the Middle Ages. At the time, people were only seen as different types of things. The fictie theory was developed by Carl Friederich von Savigny to explain the idea of a legal individual. Savigny contends that the goal of law is to safeguard individuals' right to free speech. As a result, the basic idea of a person or legal person is the same as the idea and comprehension of people. Only people can currently bear distinct rights and obligations. There are two methods that this idea can be put into practice. First, it is feasible to fully or partially absolve humans of their responsibility for upholding rights and obligations. Second, founded on positive law, a non-human entity may be given legal personhood. A legal individual has been established if the second requirement is satisfied (in an artificial sense). It is known as a legal entity because it has rights and responsibilities separate from those of humans. An entity that is regarded as a "person" for legal reasons is referred to as a legal person (juristic person). It is clear from this that Savigny's viewpoint places more emphasis on the artificial character of a legal person. In contrast to humans, whose existence can be felt through all five senses, a PT's legal body is represented by a capital city that is allied with them. The shareholders give the funds. Similar to how children grow from babies to toddlers to teenagers to adults, PT develops as it obtains capital, operating profit, assets, and intellectual property rights as a result of its business operations. Shareholder consent is necessary prior to establishing a PT. The deal resolves PT's management-related issues. PT is insufficient to serve as a structured fiction. PT operations are managed by individuals even though it has institutions like the General Meeting of Shareholders (hereinafter referred to as the GMS), directors, and commissioners. As a result, PT is handled by people. A PT can use intermediary management to communicate with its owners, staff, the government, and outside parties as soon as it is established.

A legal person is something that has the same rights and obligations as a person, can sue and be sued in court, and has its own wealth. Human engineering was used to make this legal entity so that it would have the same standing, power, and position as humans. This organism is referred to as an artificial person because it was developed through human engineering. Human beings (also referred to as "natural persons") and legal entities are both included in the legal definition of the word "person" (*persona moralis*, legal entity, *rechtsperson*). Both have legal rights and duties as citizens of the law. A legal entity is a separate entity from its creators, members, and investors because it is a legal topic. Like a person, this organization has the ability to transact business on its own.

A limited liability company's formal position as a capital partnership and its declaration that it is unconcerned with the traits of its shareholders are two different things. This claim also seeks to establish the nature or substance by which corporate business entities vary from other types of business entities, such as civil partnerships. Civil partnerships are made up of two or more people who are personally acquainted, such as close relatives or close friends, and include partnerships that take the shape of businesses and limited partnerships. Rules for entering and leaving the partnership may exist, but they cannot change the partnership's unique characteristics. The main goal here, in contrast to a corporation, is to amass as much capital as you can within the time period allowed by the articles of association. Whoever puts money into a company doesn't matter; the owners might not even know one another. Personality traits are therefore lacking in this group. In fact, not all corporate structures put shareholders' character traits and interpersonal ties last when it comes to fund-raising. Personal ties between stockholders are still highly valued in a closed



company. This cannot be compared to a company that is traded openly. Here, maximizing capital raise takes precedence over appreciating each shareholder's unique link.

The Limited Liability Company Law's Article 1 Number 1 states that a company is a legal body created by contract. This clause suggests that once a business is formed, the terms of the agreement must be followed. Accordingly, in addition to the UUPT, contract law also applies to the creation of corporations. A legal action is one that results in a legal consequence that is desired or regarded as desirable by law in an agreement where the parties are cognizant of or have anticipated the legal repercussions that will result from their agreement. As a result, "act" or "legal action" should be used in lieu of "deed" in Article 1313 of the Civil Code. The term "legal action" has the benefit of encompassing agreements that are incompatible with the *onrechtmatige daad* and *zaakwaarmening* as well as simply showing that the legal outcome is desired or thought to be desired.<sup>2</sup>

An agreement is defined as an act by which two or more parties commit themselves to one or more other parties in Article 1313 of the Civil Code. The Civil Code's definition of PT as a legal person suggests that the agreement's duties also apply to PT's founder. According to Article 1320 of the Civil Code, "the existence of an agreement between those who bind themselves, the capacity of the parties to enter into a contract, the existence of a specific subject, and the existence of a lawful cause (*causa*)" are the four requirements that must be satisfied for a contract to be valid. Both the subject and the target of the agreement meet the aforementioned requirements. The first and second criteria are related to the agreement's topic. The third and fourth criteria are related to the agreement's goal.

A limited liability company's goal, like that of a capital partnership, is to bring its owners profit or advantage. The firm must conduct business operations in order to achieve this goal. While UUPT alludes to business action, KUHD refers to business operation. Contrary to the word "commercial acts," which is specifically defined in Articles 2 through 5 of the Indonesian Commercial Code, this term refers to particular commercial acts (KUHD). Corporations are obliged to specify their goals and objectives as well as their business activities in their articles of association under Article 18 of the Limited Liability Company Law (UUPT). Business activities are defined as actions carried out by the corporation to further its goals in Article 18 of the articles of incorporation.

To participate in legal associations, such as signing contracts or carrying out particular business activities, legal entities need capital. No matter how wealthy the founder, the legal company gets its start-up money from its assets. As a result, one of a legal entity's fundamental characteristics—namely, its unique assets of personal assets—is that it is a corporation (including a Limited Liability Company, abbreviated as *Persero*). A company's capital is defined by Article 31(1) UUPT as the entire nominal value of its shares. The total nominal value of the stock issued by the business is referred to as authorized capital. The maximum capital and shares that can be issued by a company are determined by its authorized capital; it does not necessarily represent the company's real financial strength. A limited liability business must amend its articles of incorporation if it wants to raise more money than is necessary. The general meeting of shareholders of a limited liability company must ratify any amendments to the articles of incorporation (GMS).

A limited liability company has the status of a legal entity and is acknowledged by the law as the holder of rights and duties if it satisfies the author's criteria. Legal entities might therefore be accountable for the properties of other legal entities. A legal body obtains its assets from its members or through acts of separation carried out by a person, a private party, or the government for a particular objective. These assets are there to help the involved legal body accomplish certain goals. This company's assets are kept apart from its employees' personal assets even though they are funded by their earnings. The acts of a legal body that is represented by the administration, however, have no bearing on the assets of its members. An organization must have wealth that is different from the wealth of other legal subjects in order to be considered a unique legal entity. For the pertinent legal entity, which is a corporation, the distinct component of wealth is a necessary prerequisite.

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<sup>2</sup> H.M.N. Purwosutjipto, *Pengertian Pokok Hukum Dagang di Indonesia, cetakan kedua, Penerbit Perseroan Terbatas PT. Djambatan Press and Publisher, Jakarta, 2007, hlm. 17-18.*





Any owner, founder, administrator, or other party associated with the legal entity shall maintain personal and private property rights in a separate and distinct manner from the institutions and assets of the legal entity in issue. As a result, the assets of the separate legal body are immune from personal legal actions brought by its members or administrators against third parties. The assets of a separate legal entity have repercussions, according to Arifin P. Soeria Atmadja, including the inability of private members to collect legal entity receivables from third parties, the impossibility of compensating between personal debts and legal entity debts, and legal relations, whether by agreement or legal process, between members and the entity law i. A limited liability corporation has assets because it is a separate legal entity, as was previously mentioned. As a result, the limited liability corporation may use these assets for operations with particular goals or purposes. On this subject, the author will go into more detail as follows:

- has a specific purpose;
- legal entity has an unique goal that might be a business goal or an ideal goal that is separate from the legal entity's goals.

It is not an objective set with the intention of only helping one or a few group members. These objectives are pursued by the legal bodies themselves, as shown by the organs. A clear and unambiguous statement of the desired outcomes is typically found in the articles of association of the pertinent legal entity. Every legal entity is required to fulfill a specific purpose in accordance with all relevant regulations and laws. Legal entities' goals may be idealistic or more pragmatically geared toward business or profit. Legal organizations, for instance, may be oriented toward business or non-profit goals. These goals must belong to a legal entity and be separate from those of its creators or leaders. Therefore, it is crucial that the goals of this legal entity institution be stated clearly in order to understand the efforts made to accomplish them.<sup>3</sup>

The aim of a legal entity is distinct in order to prevent it from becoming the personal goal of one person or several members of the legal entity's organs. Legal entities operate as legal subjects with their own rights and obligations under the law in order to accomplish their objectives (*rechtsbetrekkingen*). Objectives must be clear and firm because a legal body can only act through the mediation of its organs. It is crucial because it prevents interpretations that might complicate the position of the legal entity, which benefits both the organ and third parties in interactions between a legal entity and the outside world. This also makes it easier to determine whether an organ's actions are within or outside of these restrictions, ensuring that the legal body cannot be held accountable for the deeds of any of its constituent parts. The extent of the legal entity's competence or authority as a legal subject in the dynamics of legal traffic will eventually be determined by the clarity of the relationship between business and goals. This explanation is crucial because a legal entity can only take action through the mediation of its office organs, who eventually answer to the specific administrators or members. It will be simple to distinguish between personal management actions and those of legal entities operating as legal subjects once the scope of competence is defined (*rechtspersoon*).

Legal traffic is something that should worry everyone who is acting legally. Legal entities (*rechtspersoon*) have separate subjective interests in the association of law because of their unique assets, goals, and activities. The law safeguards the actual subjective interests in order for each legal entity taking part in a legal association to secure those interests from third parties (*rechtsbetrekking*). Legal entities have privileges that are governed by the law. These interests are now regarded as subjective rights as a consequence of judicial developments. Legal entities have their own interests that they assert and protect against third parties as a result of their legal association. The self-interest of this legal entity must be stable, i.e., it must be anchored to a protracted span of time rather than a transient one. Each legal entity has its own interests, which are arbitrary rights that result from legally acknowledged events, in achieving its goals. As a result, in the case of

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<sup>3</sup> Jimly Asshiddiqie, *Perkembangan and Konsolidasi Lembaga Negara Pasca Reformasi*, Cetakan Kedua, penerbit Sekretarian Jenderal and Kepanitiaan MKRI, Jakarta, 2006, hlm 72.



legal association, legal entities have the ability to file lawsuits and assert their legal rights in court. Meijers contends that even though the money the committee raised did not belong to the committee because the organization and his work were temporary, it is incorrect to say that legal entities' interests are those of temporary collection agencies and for natural disasters because those interests are unstable. Because it lacks stable or long-term interests, the committee group in this case does not satisfy one of the requirements needed to become a legal body.

A legal entity is a non-sentient, human-like legal subject that is unable to move on its own. Instead, the entity is represented by common people who behave in its best interest rather than their own. law. These people are referred to as the legal entity's instruments (equipment such as managers, directors, etc.), an important part of the organizational framework of the legal entity. Legal entities are not biological beings, like people. Legal entities lack "central bewustzijn," loss of will, and mental ability. As a result, he is powerless to take judicial action on his own. He is required to act via regular people (natuurlijke personen), but the person acting does so for and on behalf of the legal body, not for him or herself alone. Ali Rido contends that since a legal body does not fall into the category of a person, it is not entitled to the same rights, obligations, and legal rights that apply to people.

The legal capacity or power of a legal entity in the area of property law, unless expressly excluded by law, basically shows full equality with humans. A legal person is capable of making agreements, holding usage rights, copyrights, trademarks, and patents, as well as engaging in activities that are forbidden by Article 1365 of the Civil Code and using specific names. The thirty-year time frame for using legal entities restricts the legal capability of assets. A legal person is immobile in the realm of family law. Legal entities that are not subject to property rules may act as trustees. "If a judge must designate a guardian in any of these cases, the guardianship may be directed to a foundation or charitable institution based in Indonesia, or to a foundation or charitable institution based here," states Article 365 of the Civil Code. This is true if the foundation's or charity's bylaws, articles of incorporation, or rules call for it to look after minors for a protracted period of time.

Legal entities, unlike people, cannot dissolve or pass away, and their assets do not transfer to their heirs. Legal organizations do not have heirs under Article 830 of the Civil Code and are not allowed to make wills under Article 895 of the Civil Code because they are not human. When it comes to disrespecting judicial organizations, there are two opposing viewpoints. Paul Scholten asserts that civil law permits the defense of a judicial body's honor and image. As a result, it also pertains to real people, such as the management and staff of the company, whose honor and reputation are damaged. This is a crime in accordance with Article 1365 of the Civil Code. Criminal contempt is only allowed against individuals, according to the ruling of the Dutch Supreme Court (H.R), dated 16 February 1891 (W.6083). With this ruling, legitimate groups are exempt from the requirements of Criminal Code Article 310. The Law of May 16, 1929, S. 34 Article 2, serves as the basis. Usually, the relevant legal entity's articles of association and other laws define what the organs of the legal entity must do and what they must not do. The provisions and internal rules that apply within the entity, such as those contained in the articles of incorporation and other rules, prevent the parts of the legal entity from acting arbitrarily as a result.

Unless it benefits the legal entity or is authorized by a higher-ranking organ, a decision made by an organ of a legal entity that goes beyond the predetermined limits becomes that organ's personal responsibility. A higher-ranking organ's approval must also be within the parameters of its power. As stated in Article 1656 BW, "All actions, for which the administrators are not permitted to do so, are only binding on the association, whether the association has actually benefited from it or merely that those actions have been lawfully sanctioned," are legal. Following that, in line with Article 45 of the Commercial Code:<sup>4</sup>

- The company's management is only responsible for carrying out the tasks assigned to them as efficiently as possible in light of the company's responsibilities;

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<sup>4</sup> Ali Rido, *op.cit*, hlm 10-14.



- If they violate any of the terms of the Deed or later alter the terms of the Establishment and cause losses to third parties, they are each and every one of them individually liable for the entire amount.

This justification demonstrates that when an organ behaves illegally, a legal body cannot be held accountable for all the consequences; rather, the organ is held personally liable for any harm done to third parties. As a result, the original legal body that the organ represents is not bound and cannot be held accountable by a third party. In a different situation, if the organ acts in accordance with the scope of the authority given to it, even if a mistake that might be construed as an unlawful act (*onrechtmatige daad*) is made, the legal entity is still liable in accordance with the standards listed in Article 1365 BW. The vast majority of law experts, including Paul Scholten, concur with that assertion.<sup>5</sup>

A limited liability company is, in accordance with the foregoing definition, a capital association created in accordance with a contract in order to carry out particular business activities, and its capital is made up of shares. As a result, the limited liability company has assets of its own that are distinct from those of its owners and workers. If the assets entrusted as the founders' money relate to founders who are a husband and wife pair without a marriage contract, they must be handled strictly. Based on its rights and obligations, a limited liability company pursues particular goals and its own interests. Undoubtedly, this will harm third parties who sign formal contracts with the PT. If the PT is later determined to be insolvent by a commercial court, one of the founder's assets (or husband and wife if there is no marriage agreement) rather than two of the founder's assets as stated in article 7 paragraph 1 will be used to settle the PT's debt to the third party (creditor). (1). In light of this, the author thinks that adding two characters to letter an of article 7 is necessary: If the pioneers are a husband and wife with a partnership of assets, an agreement for separating assets must be included despite the requirements of Article 7 paragraph (1). Article 7 paragraph 1 letter b: Whereas, if the husband and wife use inherited property or property that each partner obtained after the marriage, the provisions of Article 7 letter a do not apply.

PT is both a legal body and a type of corporate entity. PT is utilized by humans to conduct business and pursue profit. Among different organizations, including small businesses, conglomerates, individuals, and the Republic of Indonesia, PT is the favored business entity for a range of business activities, from small business services to banking. The diversity of electors and the commercial operations of PTs pose a challenge in and of themselves for laws and regulations. A PT is a form of business entity with a global focus. PT is usually used by businesses that need a lot of funding and can't be managed by a small team of people. PT, as previously explained, is a way for people to engage in commercial activity and seek profit through capital-intensive commercial activity.

A PT can be considered a legal entity, as the author explained in the preceding subchapter. This relates to the legal subject's recognition under the law in the relevant state. The aforementioned question relates to "personal standing" in the literature of international private law, the corpus of rules that are universally applicable. In order to secure and defend the community and its institutions, the state grants or recognizes personal conditions or circumstances that are governed by personal status. Which legal provisions "apply" to physical therapy are determined by this collection of rules. There are four (four) theories that can be used to identify a legal entity's personal status. The idea of incorporation occurs first. According to this theory, a legal body is bound by the laws of the state in which it was established or the state whose laws were in force at the time it was established. This idea is used in China, Taiwan, South Korea, the Philippines, and Vietnam. The second idea is that, in accordance with the statute, a legal body is subject to the laws of the country in which it has its domicile. The personal standing of legal organizations is based on the most effective management location, claims the third theory, effective management. Finally, control theory examines how individuals and legal organizations are treated in relation to the national laws that govern them. For limited liability businesses, this idea of control can be divided into shareholder and management levels.

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<sup>5</sup> Riduan Syahrani, *op.cit*, hlm 65.



Everyone is acknowledged as a legal subject and treated as a human being in Indonesia, a nation with a written constitution. According to Article 27 of the 1945 Constitution, all citizens must unconditionally support this law and government and have equal footing in front of them. According to Subekti, individual law consists of regulations governing people as legal subjects, regulations governing the possession of rights, regulations governing the exercise of those rights, and regulations governing matters impacting these capacities. Personal law Van Apeldoorn claims that purusa law encompasses all regulations relevant to purusa or judicial issues. In Purusa, legislation has the power to decide, impose rules, and take action. The interactions between formal entities and members of society are governed by legislation.

A legal subject is defined as someone who is capable of acting in accordance with the law or who is legally qualified to hold a privilege. A individual or other legal entity is a subject of law based on these rights and obligations. Academics claim that there are numerous definitions for law concepts. The author presents these concepts as follows:<sup>6</sup>

- Legal subjects are the owners of legal rights and duties, according to Subekti, who defines them as beings and formal entities;
- A legal subject, in Mertokusumo's definition, is anything that is capable of giving rise to legal obligations and privileges. As a result, in this scenario, only humans are capable of becoming legal objects;
- Syahrani claims that the legal system upholds duties and rights;
- A human being with a legal personality and anything else based on the demands of such a society and recognized by the law as a supporter of rights and obligations forms a legal subject, according to Chaidir Ali;
- Agra defines legal subjects as people who either have *Rechtsbevoegdheid* (legal standing) or who have rights and duties that give them the ability to act legally.

According to the views of the aforementioned scholars, human beings and legal entities are everything that can be considered a legal subject and are thus capable of having legal rights and obligations. Humans are therefore acknowledged by the law as having rights and obligations as a legal subject or as a person. Legal subjects, particularly in civil law, hold a position and perform a vital role due to their potential for legal authority. Civil law regards legal topics as an essential legal category because they are fundamental ideas and understandings (*concept en begriff*). There are two types of people who are objects of law: *natuurlijke person*, or "person as a person," and *rechts person* (literally, "person in the shape of a legal entity," or "person whose existence is created by law in fiction").

Additionally, corporations and partnerships are two different types of legal entities that are differentiated:

- Public legal entities (*Publiek Rechts Persoon*), which are managed by the state and have a visible nature of public interest components;
- Private Legal Persons (*private Rechtspersoon*) are private legal organizations with characteristics that reflect a person's interest in private legal persons.

In essence, a limited liability company is established with the parties' agreement and the signing of a PT deed of establishment in front of a notary. The articles of association, which are the formal rules for running, managing, and regulating everything in the PT, including conducting business operations, are contained in the deed of creation. This makes sure that the deed of establishment of a PT signed in front of a notary does not represent either the establishment of a PT based on an agreement or the presence of a capital partnership. The division of personal property, natural people, or legal entities for the purpose of investment or investment to make money through the conduct of business activities is thus a requirement for the creation of a limited liability company. This declaration's construction of a PT shows that a PT can be formed without the agreement of at least two (two) parties. As a result, PT is a choice for those who wish to conduct business operations that demand the use of a single-person-established legal entity. The new

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<sup>6</sup> Harumiati Natadimaja, *Hukum Perdata Mengenai Hukum Orang and Hukum Benda di Indonesia, cetakan pertama, perseroan terbatas PT. Graha Ilmu, Yogyakarta, 2009, hlm. 7.*



regulation for Limited Liability Companies regulates modifications to the approval process as well as the foundation for the creation of a PT. The notary is given research on the reliability of the proposed Limited Liability Company's proposed papers in order to carry out the notarial act.

For starting a company in Indonesia, the SABH online platform provides a wide range of benefits and conveniences. The online system, however, has a flaw when it stops functioning because of a provider signal or a power failure. Legislation needs to control offline circumstances and behaviors in order to protect the general public and the business community. When offline, it's important to keep in mind the process and duration required to get permission to create the PT legal entity. The quickest turnaround time is nine (9) days in the event that the Minister of Law and Human Rights does not approve the applicant's papers. The attestation system requires some time to review the applicant's numerous document submissions. The corporate world, meanwhile, demands quickness and efficiency. The Minister of Law and Human Rights may now approve registration/registration instead of validation. The notary must confirm the document's validity before submitting it for the creation of a PT legal organization. Following the conclusion of the deed before the notary, the PT acquires legal status. The limited liability company's legal status must be registered with the Minister of Law and Human Rights in order to adhere to the concept of publicity.

The aforementioned explanation makes it clear that the agreement governs the formation of a legal subject in the form of a legal entity in the form of a capital partnership formed on the basis of an agreement as stated in the deed. It is the creation of a legal subject in the form of a legal entity in the form of a capital partnership based on an agreement stated in the deed that constitutes the activity of creating a limited liability company through a notarial deed. As a result, the limited liability company has assets of its own that are distinct from those of its owners and workers. According to their legal obligations and rights, limited liability companies seek particular objectives and interests.

## **CONCLUSION**

The nature of the establishment of a limited liability company in Article 7 paragraph (1) of Law Number 40 of 2007 concerning limited liability companies is:

- Creating legal certainty in business with legal entities in significant production branches that impact public livelihoods in national economic development based on economic democracy with the goal of advancing general welfare focused on providing protection to all Indonesian people, particularly in the area of property, in order to realize equitable welfare and prosperity for all Indonesian people, both individuals and groups;
- In order to advance significant production branches of the economy in a way that is fair for all Indonesians, both individuals and legal entities, this entails fostering legal certainty in the commercial sphere as part of realizing the goals of national economic development based on economic democracy.

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